

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARTON D. MASER and U.S. POSTAL SERVICE,
Pittsburgh, PA

*Docket No. 01-786; Submitted on the Record;
Issued December 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On November 30, 1999 appellant, then a 46-year-old clerk, filed a traumatic injury claim alleging that false allegations made on November 16, 1999 caused his high blood pressure, anxiety and stress.

In a November 16, 1999 report, the employing establishment noted that appellant was accused of threatening to “shoot” fellow employees and that an inspector was handling the incident and investigation. The postal inspector noted in his December 10, 1999 memorandum that he had investigated the matter and had spoken to the person to whom the threat was allegedly made. In his memorandum, the postal inspector confirmed that appellant did not make any threats.

In a November 17, 1999 discharge slip, which was signed by a nurse, it was noted that appellant needed rest to reduce anxiety and his blood pressure readings. An annotation was also made for appellant to call a number at the Veterans Administration for anxiety-related counseling.

In a November 17, 1999 assessment, nurse Jacqueline Blake¹ stated that appellant was a “stressed out” postal worker who had been accused of violent behavior and was clearly upset.

In a November 22, 1999 disability certificate, Dr. Robert D. Scott, Board-certified in internal medicine, stated that appellant was seen in his office on November 17 and 22, 1999. He found that appellant was currently suffering from work-related anxiety secondary to work-related stress and was unable to return to work.

¹ The name appears to be Blake, but appellant indicates it was Blahcar.

In a December 14, 1999 statement, the employing establishment controverted appellant's claim be controverted. The employing establishment proffered that appellant was interviewed by the postal inspector after receiving information alleging that he made a violent threat, which was in accordance with the violence in the workplace policy. The employing establishment contended that appellant's disability was due to his reaction to an interview concerning an alleged threat and was not an employment factor.

In letters dated December 20, 1999, the Office of Workers' Compensation Programs informed appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such. Appellant was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

In a January 19, 2000 report, Dr. Howard N. Garb, a clinical psychologist, stated that he met with appellant for an initial counseling session and would be meeting with him once a month as he continued to be under a great deal of stress. He diagnosed adjustment disorder with mixed mood.

In a January 28, 2000 decision, the Office found that the evidence was not sufficient to establish that the claimed incident occurred in the performance of duty.

By letter dated February 13, 2000, appellant requested reconsideration and submitted numerous medical reports and articles concerning his stress, anxiety, hypertension, high blood pressure and gout along with copies of previously filed forms. In his request, appellant stated that he had a traumatic injury of stress, anxiety, hypertension, high blood pressure with numerous side effects that occurred on November 16, 1999, due to the employing establishment's false allegations and dislike of military service personnel spurred on by two female postal employees. He further stated that as a result of the incident, he had to take medication for high blood pressure, increased cholesterol levels and prior gouty arthritis, all of which were "traumatized due this traumatic event on November 16, 1999."

In unsigned progress notes from November 17 to December 2, 1999, annotations were made that appellant had anxiety-related hypertension and that he was extremely anxious. Additionally, it was noted that he was very angry at how the post office treated him on unfounded rumors.

In a February 2, 2000 report, Dr. Scott opined that appellant presented to him on November 17, 1999 with a complaint of his heart racing. Dr. Scott stated that appellant related the events of the previous night at work where he was accused of possible homicidal threats. He observed that appellant was extremely anxious and angry about the false accusations and his blood pressure was elevated. Dr. Scott further found that appellant's blood pressure was not in a dangerous range and that it was anxiety related. He stated that appellant received treatment for his anxiety from another physician and two weeks later his pressure had normalized.

In a February 15, 2000 certification report, Dr. Garb stated that appellant was under severe stress and had become anxious. He found that appellant's condition commenced on

November 16, 1999 and the probable duration of the condition was six months. Dr. Garb explained that appellant was unlikely to work at the present time and was being given a program of individual psychotherapy and was receiving psychotropic medication.

Appellant provided an article from the Arthritis Foundation on stress and how it could exacerbate gout. Additionally, he provided copies of reports predating his November 16, 1999 incident, which documented his preexisting knee and right ankle pain and gout and continued problems with these conditions. Appellant also supplied a copy of a bill for a root canal performed on January 13, 2000, which he alleged, was due to repeated stress of the incident.

In a July 20, 2000 decision, the Office hearing representative found that appellant had established that the incident where he was interviewed by the employing establishment regarding alleged threats of violence, which were later to be determined as false accusations was a compensable factor of employment within the scope of the performance of duty. Therefore, his emotional reaction to the investigation of false accusations would be considered within the scope of the performance of duty. However, appellant failed to submit rationalized probative medical opinion evidence in support of his claim and failed to meet his burden of proof to establish a causal relationship between the claimed conditions and the accepted factor of federal employment.

The Board finds that the instant case is not in posture for a decision.

The Federal Employee's Compensation Act² provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course employment."⁴ "Arising in the course of employment" related to the elements of time, place and work activity.

To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place where she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.⁵

² 5 U.S.C. §§ 8101-8193.

³ *Id.* at § 8102(a).

⁴ This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

⁵ See *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp* (*Joseph L. Barenkamp*), 5 ECAB 228 (1952).

As the Board observed in the case of *Lillian Cutler*,⁶ however, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experiences emotional stress in carrying out his employment duties, or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or nature of her work. By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.

An employee's emotional reaction to an administrative or personnel matter is generally not covered under the Act because it is not considered to arise out of and in the course of employment. But error or abuse by the employing establishment in an administrative or personnel matter or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.⁷

In this case, the Office accepted that the incident where appellant was interviewed by the employing establishment regarding alleged threats of violence, which were later to be determined as false accusations was a compensable factor of employment within the scope of the performance of duty and that his emotional reaction to the investigation of false accusations would be considered within the scope of the performance of duty. The Board, therefore, finds that the incident occurred as alleged.

Having established a compensable factor of employment, the question becomes a medical one: Did these factors cause or contribute to appellant's emotional condition?

⁶ 28 ECAB 125 (1976).

⁷ *Margreate Lublin*, 44 ECAB 945 (1993).

Appellant submitted numerous reports in support of his claim, which included nursing notes,⁸ articles on gout and stress,⁹ and unsigned progress notes.¹⁰ He also submitted reports from his treating physician Dr. Scott. In his November 22, 1999 disability certificate, Dr. Scott noted that appellant was seen on November 17 and 22, 1999. He stated that appellant was currently suffering from work-related anxiety secondary to work-related stress and was unable to work. In his February 2, 2000 report, Dr. Scott discussed the details of November 16, 1999 and stated that appellant was extremely anxious and angry about the false allegations and that his blood pressure was elevated. He further stated that appellant's blood pressure was not in a dangerous range and that it was anxiety related. Appellant also supplied two reports from Dr. Garb. In his January 19, 2000 report, Dr. Garb merely provided a diagnosis of adjustment disorder with mixed mood. He did not indicate that appellant's condition was causally related to his employment. However, in his February 15, 2000 certification report, Dr. Garb stated that appellant was under severe stress and had become anxious and found that appellant's condition commenced on November 16, 1999.

Although these reports are general in nature and insufficient to meet appellant's burden of proof, they provide some support for his claim. These reports raise an uncontroverted inference of causal relationship between appellant's condition and the compensable employment factor and thus are sufficient to require further development of the case by the Office.¹¹

On remand, the Office should refer appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on whether appellant's emotional condition is causally related to the accepted employment factor and, if so, if there is any causally related disability.¹²

⁸ These reports are of limited probative value, as nurses are not considered physicians under the Act. Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. *Jan A. White*, 34 ECAB 515, 518 (1983).

⁹ The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing a causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹⁰ These reports are also of limited probative value as the Board has held that any medical evidence which the Office relies upon to resolve an issue must be in writing and signed by a qualified physician. *James A. Long*, 40 ECAB 38 (1989); *Walter A. Gundiger*, 37 ECAB 200 (1985).

¹¹ See *John J. Carlone*, 41 ECAB 354 (1989).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.895.3(d)(6) (June 1995) (a claim for an emotional condition must be supported by an opinion from a psychiatrist or a clinical psychologist before the condition can be accepted).

The July 20, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is returned to the Office for further action in conformance with this decision.

Dated, Washington, DC
December 18, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member